



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/146497

PRELIMINARY RECITALS

Pursuant to a petition filed January 09, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance (MA), a telephonic hearing was held on February 19, 2013, at Sheboygan, Wisconsin. The record was held open for petitioner to provide new information, which was received and reviewed again by the DHCAA. The DHCAA again upheld the PA denial.

The issue for determination is whether the DHCAA properly denied the petitioner's prior authorization (PA) request for comprehensive orthodontic treatment and periodic treatment visits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By written submittal of: Robert Dwyer, DDS
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County. She is 13 years old and certified for MA.
2. On November 29, 2012 petitioner's dental provider submitted a PA request for petitioner to receive comprehensive orthodontic treatment (braces) and periodic treatment visits.
3. On December 5, 2012 the DHCAA issued a notice to petitioner stating that her PA request had been denied.
4. The DHCAA denied the PA request because it did not find that the request demonstrated the medical necessity of the service.
5. Petitioner's Salzmann index score was 25.
6. Petitioner's malocclusion is not severely handicapping.

DISCUSSION

Orthodontia is an MA-covered service for persons under age 21, subject to prior authorization. Wis. Adm. Code §DHS 107.07(2)(c)11. Prior authorization is granted when the generic authorization criteria at §DHS 107.02(3) are met. Those criteria include the requirement of medical necessity. The DHCAA has defined medical necessity in its policy document, the Prior Authorization Guidelines Manual at pages 125.003 and 125.005, which requires a Salzmann Index score of 30, or the documentation of unusual circumstances that make the recipient's malocclusion severely handicapping.

The Salzmann score is a rating of the person's dental malocclusion, that is, how far from normal occlusion the person's teeth are. Petitioner's Salzmann score, as determined by the dental consultant here, is 25. There is no evidence that indicates that unusual circumstances exist that make the petitioner's malocclusion severely handicapping. Extenuating circumstances could be that, despite the low Salzmann, the malocclusion causes the person to have unusual difficulty eating or speaking, or the person has documented psychological problems caused by the abnormal occlusion. If the malocclusion is severe enough, an individual may not be able to properly chew and therefore cannot eat or digest particular foods. The inability to eat particular foods may become so extreme that an individual's health is compromised. Petitioner's mother described at hearing that petitioner does have headaches and provided the additional statements from the dentist which shows what *could happen* to petitioner without the requested treatment. Unfortunately, while I am sure that the braces would benefit her, based on the evidence before me, I do not find this to be the kind of severe handicap anticipated under the rules. I add that teeth generally do not straighten out on their own and often become more crooked, especially as this young woman continues to grow. If this happens to petitioner, or if she develops better evidence, nothing prevents her from reapplying for orthodontic work in the future.

Because petitioner's Salzmann score is 25 and the malocclusion is not severely handicapping, the requested orthodontic treatment in this case is not covered by the MA program per Wis. Admin. Code §DHS 107.02(3). The Division was therefore unable to approve the requested service.

Finally, I also add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The DHCAA properly denied the petitioner's PA request for comprehensive orthodontic treatment and periodic visits as it has not been shown to be medically necessary.

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted. The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

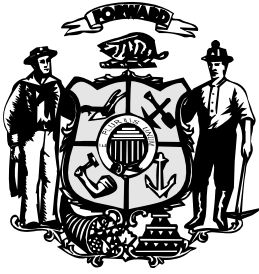
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of April, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 3, 2013.

Division of Health Care Access And Accountability